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BOOK REVIEWS.

EUGENE UNTERMYER, *Editor-in-Charge.*

THE MECHANICS OF LAW MAKING. By SIR COURTENAY ILBERT, G. C. B. New York: COLUMBIA UNIVERSITY PRESS. 1914. pp. viii, 209.

This book contains the Carpentier Lectures at Columbia University for 1913. It is deliberately limited to the "mechanics" of statute law making. It deals in a general way with such subjects as the relation of the statute and common law, the desirability of written as compared with unwritten law, and the desirability of improvement in the form and content of statute law. Of the nine lectures, two deal with the history, present organization and duties of the parliamentary draftsman's office in England, three with the technique of drafting and aids to good drafting, such as indices and revisions of statutes, investigation of facts and conditions, the comparative study of legislation and other instrumentalities which are a requisite of the drafter's art; and the remaining four with general legislative problems, such as the relation of the drafter to the legislator, different forms of legislation, and codification.

These are mostly technical subjects, but the author's style is so pleasing and his treatment of technical matters so interspersed with personal experience that the lectures are not only instructive but very readable. Sir Courtenay speaks not only interestingly, but with authority. He was connected with the office of Parliamentary Counsel to the Treasury, which is the official designation of the parliamentary draftsman, from 1886 until 1901, first as assistant and later as Counsel. Since 1910 he has been Clerk to the House of Commons. He has served as a member of the Council of the Governor General of India, and is the author of "The Government of India" and "Legislative Methods and Forms."

The author tells us that the office of parliamentary draftsman was organized in 1869 for the purpose of securing (1) Economy in the preparation of legislation; (2) Better control by the government over legislation with respect to substantive policies and finances; (3) Improvement in the form of statutes. All of these objects have been substantially attained. Notwithstanding the increase in legislation, drafting now costs Parliament less than in the years preceding 1869. The Treasury has effective control over all legislation involving expenditures. The most important service rendered by the office, however, has been its improvement in the form of the statute law.

Applying this experience to our conditions Sir Courtenay gives us some interesting observations on the extent to which this office might be duplicated in the United States. He says it is probably not suited to our conditions, because our executive officers have no part in legislation and we have no "government" bills. He assumes that any drafting agency in this country must be controlled not by the executive, but by the legislature. He suggests that American legislatures might require that all bills before coming from committee be revised by expert draftsmen appointed by the Speaker or selected by the committee from a list of "approved" draftsmen. He further suggests that every legislature should have a committee "to keep a watchful eye on the condition of the statute book; to suggest and supervise the execution of such

useful processes as indexing, expurgation and revision of the statute book, the consolidation of statutes," and all other processes which make the statute law "more knowable and intelligible."

Respecting the qualifications of the drafter the author suggests that the more he knows about the law the better, for he must be "able to discover and appreciate the effect of existing law so that he may decide whether a change is necessary"; and, as he might have added, what method and language is best suited to effectuate the change. The drafter must know existing law and particularly statute law. He therefore needs indices, revisions and other helps to enable him to discover existing statute law quickly and accurately. The English experience indicates that such revision and indices will be the better for the participation of the draftsman in their preparation, and the drafter will be equally benefited by such participation.

The drafter must know the conditions which create the demand for legislation and which will be affected by the legislation. This information in England he gets from investigations by administrative officers or parliamentary committees. To some extent this kind of information is furnished in this country by legislative reference bureaus and by official investigating commissions, but if there is one phase of the drafting problem that needs emphasis in America, it is the dependence of good drafting on the existence of such information.

The drafter should also be a student of comparative legislation. He must be familiar with similar legislation in other countries and its operation there. This information he obtains in England largely through the work of the Society of Comparative Legislation, of which the author was one of the founders and is now one of the most influential members. The lack of any such scientific agency for the comparative study of State legislation in this country is constantly felt by the American drafter.

The author points out that existing books on statute law are of little help to the drafter in the solving of his constructive problems. "They illustrate," he says "bad drafting. They do not, except indirectly, lay down rules for good drafting." Sir Courteney restates rules for the guidance of draftsmen derived from his personal experience and first published in his "Legislative Methods and Forms." This absence of literature on the constructive side of drafting problems is emphasized in a recent report of the Committee of the American Bar Association on Legislative Drafting. This committee is attempting to contribute to the need by preparing a code or manual of suggestions for draftsmen and forms and model clauses for constantly recurring legislative problems.

On the constructive side of the American drafting problems Willard's "Hand Book of Legislation" is suggestive and helpful, but it is now not only out of date but also out of print, and Jones' recent book on "Statute Law Making" is practically valueless to the man who has advanced beyond a general interest in the problems of drafting.

Of the relation of drafter to legislator the author says that the legislator's fear of usurpation of his functions by the draftsman is entirely unfounded. The legislator determines policies; the drafter is merely an expert assistant rendering technical service to the legislator in the formulation of his policy into effective statutory form. The author deprecates government by experts and indicates that he would be opposed to any legislative reform which tended to transfer the legislative function to experts. "Government by experts" he says "is one thing and government with the aid of experts is another."

The author, while admitting that the complexity of conditions regulated by modern legislation practically requires the delegation to administrative officers of power to make rules and regulations dealing with details, nevertheless emphasizes the importance of surrounding the exercise of the power with safeguards to prevent its abuse. This advice is of particular interest and importance in this country at the present time because of the increasing delegation by our legislatures of what Chief Justice Marshall called "the power to fill in the details of legislation." Several states have copied the Wisconsin Labor Law requiring places of employment to be "safe" and "sanitary" and delegating to administrative officers the power to fix and enforce standards of "safety" and "sanitation." Apart from the question of constitutionality of such delegation, its desirability and the means of safeguarding its exercise have become important problems in this country, and the author's discussion of this subject is particularly opportune.

The lecture on codification, its purposes and accomplishments, is very interesting. The author does not share the views of many English and American lawyers that codification tends to cramp and impede the natural growth of the law. Neither does he accept Bentham's extreme view of codification, viz., the elimination of the need of expert interpretation and application of the law. He believes in restricted codification. He finds that the reason for the success of codification on the Continent, as compared with its failure to make any progress in England, was the desire for unification of the law in Continental countries and the lack of any such pressing need in England. Judged from the Benthamic conception of its purpose, consolidation has been everywhere a failure, but in France and Germany it has succeeded in rendering the general principles of law familiar to the ordinary man, and in accomplishing uniformity. The author gives particular point to his discussion of codification by impressing on the drafter that he should always have in mind the possibility of his legislation becoming part of a general code.

Sir Courtenay was asked by President Butler to discuss the English experience in the light of the present interest of American legislators in the problem of securing expert drafting service and his lectures are confined to that subject. Occasional observations with respect to American legislation are advanced, says the author, with "much diffidence." However, the general problems of drafting, whether in England or in the United States, are much the same, and the lectures are full of suggestion and advice for the American legislator and drafter. It is to be hoped that they may stimulate interest in the improvement of our statute law and the means of accomplishing it.

Thomas I. Parkinson.

THE LAW AND PRACTICE IN BANKRUPTCY UNDER THE NATIONAL BANKRUPTCY ACT OF 1898. By WILLIAM MILLER COLLIER. Tenth Edition by Frank B. Gilbert. Albany: MATTHEW BENDER & Co. 1914. pp. lxxxii, 1513.

Somewhat over three years ago the eighth edition of Collier on Bankruptcy appeared and was reviewed in the pages of this magazine. (11 Columbia Law Rev. 389). Most of the comments in that review may be applied to the volume before us, which is now in its tenth edition. In short, three editions of this compendium have been offered to the Bar since the amending law of four years ago, so that "Collier" has practically attained the eminence of a year-book.